IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07/04/2004

Coram

The Hon'ble Mr. Justice S.SARDAR ZACKRIA HUSSAIN

Civil Revision Petition No.3164 of 1998

S.Kulandaivelu. ... Petitioner.

-Vs-

Sowrashtra Vipra Sabha Namakkal,
represented by its President and
Secretary at Dhuban Komarasami
Theru, Namakkal. ... Respondent.

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the judgement and decree dated 31.8.1998 and made in R.C.A.No.1 of 1992 on the file of the Rent Control Appellate Authority (Sub Court), Namakkal, confirming the order and decretal order dated 29.11.1991 passed in R.C.O.P.No.1 of 1987 on the file of the Rent Control (Principal District Munsif) Court, Namakkal.

!For petitioner : Mr.S.Parthasarathy
for M/s.Sarvabhauman Associates.

^For respondent : No appearance.

:O R D E R
The revision petitioner is the tenant and the revision is directed against the eviction ordered by the learned Rent Controller and as confirmed by the learned Rent Control Appellate Authority on the ground of wilful default in payment of rent.

2. The respondent Sowrashtra Vipra Sabha, Namakkal, represented by its President and Secretary filed the Rent Control Original Petition on 17.12.1986 against the revision petitioner for eviction from the petition non-residential premises on the ground of wilful default in payment of rent from October, 1985 till the filing of the Rent Control Original Petition (11.12.1986) on a monthly rent of Rs.100/-. It is stated in the petition that H.R.C.O.P.No.17 of 1981 filed against the revision petitioner for eviction on the ground that the petition premises is required for demolition and reconstruction was allowed and the Rent Control Appeal was also dismissed and the matter is pending in Civil Revision Petition in this Court. It is also

stated in the petition that towards the rent for the months of December, 1981 and January, 1982, Rs.200/- was paid on 20.2.1982; the rent for the months of February, 1982 to August, 1982 for 7 months, Rs.700/- was paid on 1.9.1982; the rent for the months of September, 1982 to July, 1 983 for 11 months, Rs.1,100/- was paid on 17.8.1983; the rent for the months of August, 1983 to October, 1984 for 15 months, Rs.1,500/- was paid on 19.11.1984 and lastly, the rent for the months of November, 1984 to November, 1985 for 13 months, Rs.1,300/- was paid on 9.12.1 995 and thereafter from December, 1985 till the date of filing of the Rent Control Original Petition i.e. 11.12.1986, the revision petitioner has not paid the rent and as such committed wilful default in payment of rent.

3. The Rent Control Original Petition was resisted by the revision petitoner/tenant in the counter admitting the tenancy from 13.12.197 4 and the quantum of rent at the rate of Rs.100/- per month and also the revision petition pending in this Court against the eviction order in H.R.C.O.P.No.17 of 1981 and confirmed by the learned Rent Control Appellate Authority. It is further stated in the counter that the revision petitioner was paying the rent regularly and since he refused to pay enhanced rent demanded by the respondent Sabha after filing of H.R.C.O.P.No.17 of 1981, the rent was paid as stated in the petition collectively without any deliberate intention and therefore, such default cannot be construed as wilful.

4. Before the Rent Controller no documents have been marked on either side and the learned Rent Controller considering the oral evidence of P.W.1, the then President of the respondent Sabha and of R.W.1, the tenant, found that the tenant has committed wilful default in payment of rent from December, 1985 and ordered eviction on 29.11.1991. Such order of the learned Rent Controller was confirmed in the appeal R.C.A.No.1 of 1992 by the learned Rent Control Appellate Authority as per judgment dated 28.7.1993. The order was challenged in C.R.P.No.3093 of 1993 and also filed C.M.P.No.5107 of 1998 to receive the registration copy of Trust Deed dated Nil relating to the respondent Sabha to show that it is a public trust and this Court remitted the matter back to the learned Rent Control Appellate Authority directing to provide opportunity to the landlord as well as the tenant to adduce evidence as they may think necessary in order to substantiate the nature and character of the Trust in this case.

5. After such remand, the trust deed relating to the respondent Sabha dated Nil was marked as Ex.B-1 and one Soundararajan, the Secretary of the respondent Sabha was examined as P.W.2 on the side of the respondent Sabha. Considering such additional evidence, the learned Rent Control Appellate Authority recording finding that the respondent Sabha is only a private trust and as such, it is not exempted from the purview of the Rent Control Act and therefore, the Rent Control Original Petition is very much maintainable and confirmed the order of eviction of the learned Rent Controller on the ground of wilful default in payment of rent. The judgment and decree dated 31.8.1998 made in R.C.A.No.1 of 1992 after remand, are under challenge in this Civil Revision Petition.

6. The learned counsel for the revision petitioner/tenant argued

considering the evidence of P.W.2 examined before the learned Rent Control Appellate Authority and referring the terms of the trust deed Ex.B-1 that inasmuch as it is admitted by P.W.2 in his evidence that the amount collected by way of rent is utilised both for public purpose and also for the purpose of marriages and for funeral expenses relating to the Sowrashtra community and to conduct night school and in assisting the students for the purpose of higher technical education and to purchase books etc., for the students and also for the purpose of establishing co-operative societies and to start new jobs to effect improvement on the field of agriculture and business in the hand-loom and weaving sectors and to help widows and social orphans (rK:f mehijfs;) and also to attend on the handicapped poor patients suffering from incurable disease and therefore, since the respondent Sabha fits into the definition of public trust, the Rent Control Original Petition as filed is not maintainable. In this regard, the learned counsel for the revision petitioner relied on the decision Ranjan Devasahayam vs. - Hindustan Bible Institute India reported in 1996-1 Law Weekly, 533, in which, this Court has held in paragraph 13:-

"As the suit building is the property of a "Trust" coming within G. O.2000 and so the Act will not apply and the plaintiff cannot go before the Rent Controller for the eviction of the tenant from the said building and so there is no scope at all for considering the alleged effect of the G.O. on Section 10(3)(b) of the Act."

The learned counsel for the revision petitioner also submitted an unreported judgment of this Court dated 9.3.1998 delivered in S.A.No.190 3 of 1997 filed by one Saravana Enterprises, represented by its Proprietrix I.M.T.Sarojadevi against Sowrashtra Sabha, Madurai, through its Honorary Secretary, in which D.Raju,J., (as he then was) held:-

".... merely because it belongs to or it related to the members of a particular community alone, cannot be said to be a private trust."

7. It is seen from Ex.B-1 that the amount collected by way of rent by the respondent Sabha is utilised both for public purpose and also for the purpose of marriages and for funeral expenses relating to the Sowrashtra community and to conduct night school and in assisting the students for the purpose of higher technical education and to purchase books etc., for the students and also for the purpose of establishing co-operative societies and to start new jobs to effect improvement on the field of agriculture and business in the hand-loom and weaving sectors and to help widows and social orphans (rK:f mehijfs;) and also to attend on the handicapped poor patients suffering from incurable disease. As such, it is clear that the respondent Sabha is a public trust in which case, the respondent sabha being a public trust is exempted from the purview of the Rent Control Act. It follows that the Rent Control Original Petition as filed is not maintainable. Though no case was set up and specific pleading was not taken in the counter that the respondent Sabha is a public trust and as such the petition premises is exempted from the purview of the Rent Control Act, such stand taken by the revision petitioner/tenant before this Court is very much maintainable being the question of law and the finding recorded by the learned Rent Control Appellate Authority that the respondent Sabha is only a private trust and so

the maintainability of the Rent Control Original Petition in favour of the respondent Sabha cannot be said to be correct. Such finding of the learned Rent Control Appellate Authority is to be set aside.

8. In the result this Civil Revision Petition is allowed setting aside the judgment and decree dated 31.8.1998 made in R.C.A.No.1 of 199 2 by the learned Rent Control Appellate Authority and the R.C.O.P.No.1 of 1997 is dismissed as not maintainable. No cost.

Index :Yes.
Internet:Yes.

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To
1) The Subordinate Judge,
Namakkal.

2) The Principal District Munsif,
Namakkal.

3) The Section Officer,
V.R. Section,
High Court,
Madras.